

## **Proposed Local Rules of Criminal Procedure For Comment by May 31, 2006**

### **LR Cr P 5.1.1. Pretrial Services Interview**

Pretrial services officers (or probation officers acting in the capacity of pretrial services officers), to the extent practicable, shall attempt notification of counsel prior to conducting pretrial services interviews. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request, in accordance with LR Cr P 5.1.2.

### **LR Cr P 5.1.2. Disclosure of Pretrial Services Information**

A written pretrial services report will, if possible, be provided to counsel in the courtroom when a defendant makes an initial appearance, and will be provided to counsel in the courtroom when a defendant appears for a detention hearing. Pretrial services information is confidential, pursuant to the provisions of 18 U.S.C. § 3153(c) and regulations promulgated by the Administrative Office of the United States Courts. Judicial officers may disclose pretrial services information, in whole or in part, upon a showing of good cause. When a demand for disclosure of pretrial services information regarding a defendant is made by service of a subpoena or other judicial process upon a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the subpoena.

### **LR Cr P 5.1.3. Modification of Conditions of Pretrial Release**

The pretrial services or probation officer may, in the exercise of his/her discretion, meet with the defendant and defense counsel and modify conditions of release. Following such meeting, if any, a Consent to Modify Conditions of Release (PS 42) shall be completed and submitted to the judicial officer for signature and filing.

### **LR Cr P 7.1. Assignment of Cases**

Cases filed shall be assigned by the clerk to a judge at the direction of the Chief Judge or through the use of random electronic methods. The clerk shall not reveal the case assignment allocation or sequence of the electronic method to anyone, unless ordered to do so by a district judge. A record of all assignments made shall be kept by the clerk.

## **LR Cr P 7.2. Reassignment of Cases**

The clerk is authorized to sign orders to reassign cases when needed and as directed by a judge of this court.

## **LR Cr P 10.1. Arraignments and Plea**

### **(a) Notice of Date and Time.**

The attorney for the government shall timely notify the defendant of the date and time of defendant's arraignment and plea to an indictment. The government attorney shall furnish a copy of the notice concurrently to defendant's counsel if counsel's name and address are shown on the docket or known to the government. When the indictment is based on substantially similar allegations that form the basis of an earlier complaint before a magistrate judge, the government attorney shall notify counsel who appeared for defendant before the magistrate judge of the date and time of the arraignment. If a defendant is without counsel, the government attorney shall promptly notify the appropriate judicial officer of that fact, so early provision of counsel may be considered.

### **(b) Notice of motion to dismiss.**

The government attorney shall serve on the defendant's counsel or on an unrepresented defendant a notice of a motion to dismiss a complaint pending before a judicial officer.

### **(c) No further notice.**

No other or further notice of arraignment and plea or motion to dismiss need be given by the clerk except on order of the court.

## **LR Cr P 12.1. Pretrial Motions**

### **(a) Date for filing pretrial motions in lieu of standard request for discovery.**

If a defendant does not elect to use the standard request for discovery, the magistrate judge shall, at arraignment, set a date within 20 days of arraignment for filing defendant's pretrial motions.

- (b) Date for filing pretrial motions in addition to standard request for discovery.

If defendant elects to use the standard request for discovery, defendant must file any additional pretrial motions (i.e., non-discovery) by the date established in the Arraignment Order and Standard Discovery Request Form available from the clerk and on the court's web site.

- (c) Time for response to pretrial motions.

The government has 7 days to respond to motions filed by defendant under paragraphs (a) and (b) of this rule.

- (d) Pretrial hearing.

The pretrial hearing will be held at least 14 days prior to trial, unless otherwise ordered by the court *sua sponte* or on motion for good cause. If the parties agree a hearing is not necessary, they must inform the district judge immediately. If the pretrial hearing requires the taking of evidence, the parties must notify the district judge in advance.

- (e) Courtroom technology.

If any courtroom technology is required, counsel must request any such technology for use at trial or other proceeding and make a certification that the court's technology staff has been notified. The certification regarding such notification shall be filed with the clerk no later than 5 business days before the scheduled commencement of the trial or other proceeding.

## **LR Cr P 16.1. Arraignment and Standard Discovery Requests**

- (a) Standard discovery request form.

At arraignment on an indictment, or on an information or complaint in a misdemeanor case, counsel for the defendant and the government may make standard requests for discovery as contained in the Arraignment Order and Standard Discovery Request form available from the clerk and on the court's web site. The form shall be signed by counsel for the defendant and the government and entered by the magistrate judge.

(b) Reciprocal discovery.

If counsel for the defendant requests discovery under FR Cr P 16(a)(1)(E), (F) or (G), in an Arraignment Order and Discovery Request form, the defendant is obligated to provide any reciprocal discovery that may be available to the government under FR Cr P 16(b)(1)(A), (B) or (C).

(c) Time for government response.

Unless the parties agree otherwise, or the court so orders, within 10 days of the Standard Discovery Request, the government must provide the requested material to counsel for the defendant and file with the clerk a written response to each of defendant's requests.

(d) Time for reciprocal discovery response.

Defendant must provide all reciprocal discovery due the government within 10 days of receiving the materials and the filing and serving of responses in paragraph (c).

(e) Defense discovery request deemed speedy trial motion.

Any request made by the defendant pursuant to this rule will be deemed a motion under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161.

(f) Duty to supplement.

All duties of disclosure and discovery in this rule are continuing. The parties must produce any additional discovery as soon as they receive it, and in no event later than the time for such disclosure as required by law, rule of criminal procedure, or order of the court, and without the necessity of further request by the opposing party.

## **LR Cr P 18.1. Principal Offices**

The headquarters of the United States District Court for the Southern District of West Virginia and its Clerk is located in the Robert C. Byrd United States Courthouse, Room 2400, 300 Virginia Street East, Charleston, West Virginia. The mailing address is P.O. Box 2546, Charleston, West Virginia 25329.

## **LR Cr P 18.2. Divisions**

The Southern District of West Virginia is composed of 23 counties. Each of these counties is assigned to 1 of 5 administrative divisions. Each division is given the name of the city in the division where the court and offices of its clerk are located. The divisions, addresses of division offices, and counties comprising each division are as follows:

### **Division 1: Bluefield**

Elizabeth Kee Federal Building  
Address: Room 2303, 601 Federal Street, Bluefield, West Virginia 24701  
Mailing address: P.O. Box 4128, Bluefield, West Virginia 24701  
Counties Composing Division: Mercer, Monroe and McDowell

### **Division 2: Charleston**

Robert C. Byrd United States Courthouse  
Address: Room 2400, 300 Virginia Street East, Charleston, WV 25301  
Mailing address: P.O. Box 2546, Charleston, West Virginia 25329  
Counties Composing Division: Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Putnam and Roane

### **Division 3: Huntington**

Sidney L. Christie Federal Building  
Address: Room 101, 845 Fifth Avenue, Huntington, West Virginia 25701  
Mailing address: P.O. Box 1570, Huntington, West Virginia 25716  
Counties Composing Division: Cabell, Mason and Wayne

### **Division: 5: Beckley**

Robert C. Byrd Federal Building and Courthouse,  
Address: Room 119, 110 North Heber Street, Beckley, West Virginia 25801  
Mailing address: P.O. Drawer 5009, Beckley, West Virginia 25801  
Counties Composing Division: Fayette, Greenbrier, Summers, Raleigh and Wyoming

### **Division 6: Parkersburg**

Federal Office Building  
Address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102  
Mailing address: Room 5102, 425 Juliana Street, Parkersburg, West Virginia 26102  
Counties Composing Division: Wirt and Wood

The court will occasionally convene in Lewisburg to deal with matters falling within either the Beckley or Bluefield Division.

### **LR Cr P 23.1. Opening Statements in Criminal Trials**

At the commencement of trial in a criminal action, the government and the defendant may make non-argumentative opening statements as to their theories of the case and the manner in which they expect to offer their evidence. If the trial is to a jury, the opening statements shall be made immediately after the jury is empaneled, and, if the trial is to the court, the opening statements shall be made immediately after the case is called for trial; but, for good cause shown, the court, on request of the defendant, may defer the opening statement for a defendant until the time for commencing presentation of that defendant's direct evidence. Opening statements shall be subject to time limitations imposed by the court. If the action involves more than one defendant, the court, after conferring with the parties to the action, shall determine the order and time of the opening statements.

### **LR Cr P 26.1. Addressing the Court; Examination of Witnesses**

Attorneys and *pro se* litigants must stand and speak clearly when addressing the court. Only one attorney for each party may participate in examination and cross-examination of a witness. With the court's permission, the attorney may approach a witness to present or inquire about an exhibit.

### **LR Cr P 30.1. Jury Instructions**

In all criminal cases, counsel for the defendant and for the government shall submit jury instructions to the court prior to the commencement of a jury trial, or earlier if ordered by the court. When it is necessary for counsel for the defendant to submit one or more jury instructions on an *ex parte* basis, those instructions must be disclosed to the government no later than the charge conference or when specified by the court. Subject to court approval, counsel may amend or supplement jury instructions after commencement of trial.

### **LR Cr P 31.1. Contact with Jurors**

After conclusion of a trial, no party, nor his or her agent or attorney, shall communicate or attempt to communicate with any member of the jury, including alternate jurors who were dismissed prior to deliberations, about the jury's

deliberations or verdict without first applying for (with notice to all other parties) and obtaining, for good cause, an order allowing such communication.

### **LR Cr P 32.1. Presentence Interview**

Probation officers shall notify counsel, prior to conducting the presentence interview of the defendant, of the date, time and place of the interview. If counsel cannot attend an interview, the information provided by the defendant shall be made available to counsel upon request in accordance with LR Cr P 32.2.

### **LR Cr P 32.2. Disclosure of Presentence Reports and Probation Records**

(a) Disclosure of presentence reports.

Disclosure of presentence reports is governed by 18 U.S.C. § 3552(d) and FR Cr P 32. Except as specifically provided by statute, rule, regulation, or guideline promulgated by the Administrative Office of the United States Courts, or LR Cr P 32.3, no confidential records of the court maintained by the probation office, including presentence reports and probation or supervised release records, shall be producible except by written petition to the court, particularizing the need for specific information. When a demand for disclosure of presentence and probation records is made by way of subpoena or other judicial process to a probation officer, the probation officer may petition in writing seeking instructions from the court regarding a response to the subpoena. No disclosure shall be made except upon order of the court.

(b) Disclosure of probation office recommendation.

The probation officer shall not disclose to anyone other than the court the officer's recommendation as to the sentence.

### **LR Cr P 32.3 Modification or Revocation of Probation or Supervised Release**

(a) Petition for modification or revocation.

- (1) A petition for modification or revocation of probation or supervised release shall be set forth on the form adopted for

that purpose by the Administrative Office of the United States. The petition shall be presented to the sentencing judge. The sentencing judge shall determine whether the petition shall be filed.

- (2) The petition shall set forth the facts allegedly constituting the violation of probation or supervised release. The petition shall also seek either a summons or an arrest warrant, modification of the terms of release, or no action.
- (3) A petition ordered filed shall be served upon the probationer or releasee, the attorney for the government, and last known counsel of record except that in all cases in which prior counsel was appointed pursuant to the Criminal Justice Act, the Office of the Federal Public Defender shall be served in lieu of service upon prior counsel. Unless the court orders an arrest warrant be issued, the petition shall be served upon the probationer or releasee after arrest, but in no event later than the initial appearance.

(b) Disclosure of evidence.

The probation officer shall, without further request by the probationer, or releasee, or his/her counsel, disclose to the probationer or releasee or his/her counsel, all evidence against the probationer or releasee, including any potential oral statement and any potentially exculpatory material. Any information disclosed by the probation officer to an attorney for the government shall be promptly disclosed by the probation officer to probationer or releasee or to his/her counsel.

(c) Recommendation for revocation of probation or supervised release.

If after a hearing the defendant is found to have violated the terms of probation or supervised release, the probation officer may make a recommendation to the court. The reasons supporting the recommendation shall be disclosed to the parties if such reasons are evidence against the probationer or releasee, as shall any response by the probation officer to recommendations by counsel.



- (d) Request for modification of the terms of probation or supervised release.

No terms of probation or supervised release shall be modified upon a waiver of counsel by the probationer or releasee unless and until the probationer or releasee shall have consulted with counsel regarding the advisability of waiving counsel. Any such waiver of counsel must certify that the probationer or releasee consulted with counsel prior to executing such waiver. In the alternative, waiver of counsel may be made by the probationer or releasee before a magistrate judge.

### **LR Cr P 44.1. Admission of Attorneys**

- (a) Admission as member of bar of court.

Any person who is admitted to practice before the Supreme Court of Appeals of West Virginia and who is in good standing as a member of its bar is eligible for admission as a member of the bar of this court. An eligible attorney may be admitted as a member of the bar of this court upon motion of a member (Sponsoring Attorney) who shall sign the register of attorneys with the person admitted. If the motion for admission is granted, the applicant shall take the attorney's admission oath or affirmation, sign the attorneys' register, and pay the clerk the admission fee.

- (b) Sponsorship of visiting attorneys by members of court.

An attorney may sponsor another attorney for membership or for *pro hac vice* status (Visiting Attorney) if the Sponsoring Attorney is a member of the bar of this court, has an office for the practice of law in West Virginia, and practices law primarily in West Virginia.

- (c) Appearance by Assistant United States Attorneys and Assistant Federal Public Defenders.

Any attorney employed by the United States Attorney or the Federal Public Defender for this judicial district must qualify as a member of the bar of this court within one year of his or her employment. Until so qualified, the attorney may appear and practice under the sponsorship of the appointing officer.

(d) Appearance by federal government attorneys.

Federal government attorneys who are not members of the bar of this court need not complete the Statement of Visiting Attorney. In cases where the United States Attorney is associated with other government attorneys in proceedings involving the Federal government, the United States Attorney (except in student loan collection cases), in addition to other Federal government attorneys, shall sign all pleadings, notices, and other papers filed and served by the United States. All pleadings, notices, and other papers involving the Federal government may be served on the United States Attorney in accordance with the service requirements of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

**LR Cr P 44.2. Legal Assistance by Law Students**

(a) Written consent.

With the written consent of an indigent and his or her attorney of record, an eligible law student may appear on behalf of that indigent. With the written consent of the United States Attorney or his or her representative, an eligible law student may also appear on behalf of the United States. With the written consent of the Federal Public Defender, an eligible law student may appear on behalf of the Federal Public Defender. With the written consent of the Attorney General of the State of West Virginia or his or her representative, an eligible law student may also appear on behalf of the State of West Virginia. In each case in which an eligible law student appears, the consent shall be filed with the clerk.

(b) Responsibilities of attorneys of record.

An eligible law student may assist in the preparation of pleadings, briefs, and other documents to be filed in this court, but such pleadings, briefs, or documents must be signed by the attorney of record. An eligible law student may also participate in hearings, trials, and other proceedings with leave of court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work. The attorney of record shall be familiar with the case and be prepared to supplement or correct any written or oral statement made by the law student.

(c) Eligibility requirements.

To be eligible to appear pursuant to this rule, the law student must:

- (1) be enrolled in a law school approved by the American Bar Association;
- (2) have successfully completed legal studies for at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis;
- (3) be certified by the dean of his or her law school as being of good character and competent legal ability. The dean's certification shall be filed with the clerk. This certification may be withdrawn by the dean at any time without notice or hearing and without any showing of cause by notifying the clerk in writing, or it may be terminated by the court at any time without notice of hearing and without any showing of cause. Unless withdrawn or terminated, the certification shall remain in effect for 18 months after it has been filed with the clerk or until the law student has been admitted as a permanent member of the bar of this court, whichever is earlier;
- (4) certify in writing to the clerk that he or she has read the Code of Professional Conduct of the American Bar Association;
- (5) be introduced to the court by a permanent member of the bar of this court; and
- (6) neither ask for nor receive any compensation or remuneration of any kind for services from the party assisted, but this shall not prevent an attorney, legal services program, law school, public defender agency, the State of West Virginia, or the United States from paying compensation to the law student, nor from making appropriate charges for such services.

### **LR Cr P 44.3. Representation of Parties**

Every party to proceedings in this court, except parties appearing *pro se*, shall be represented by a member of the bar of this court and may be represented by a Visiting Attorney and Sponsoring Attorney as provided in these rules. A corporation or unincorporated association cannot appear *pro se*.

#### **LR Cr P 44.4. Termination of Representation**

No attorney who has entered an appearance in any criminal action shall withdraw the appearance or have it stricken from the record, except by order.

#### **LR Cr P 44.5. *Pro se* Appearances**

A party who represents himself or herself shall file with the clerk his or her complete name and address where pleadings, notices, orders, and other papers may be served on him or her, and shall include his/her telephone number. A *pro se* party must advise the clerk promptly of any changes in name, address, and telephone number.

#### **LR Cr P 44.6. Admission of Visiting Attorneys**

(a) Procedure for admission.

Any person who has not been admitted to practice before the Supreme Court of Appeals of West Virginia, but who is a member in good standing of the bar of the Supreme Court of the United States, the bar of the highest court of any other state in the United States, or the bar of the District of Columbia, and who has not been convicted of a felony, shall be permitted to appear as a Visiting Attorney in a particular case in association with a Sponsoring Attorney as herein provided. The Visiting Attorney shall file with the clerk, at or before his or her initial appearance (including signing a pleading), the Statement of Visiting Attorney adopted by order of this court, which is available from the clerk and on the court's web site, and shall pay the Visiting Attorney fee. The Statement shall designate a Sponsoring Attorney, upon whom pleadings, notices, and other papers may be served. The Sponsoring Attorney shall consent to the designation and shall thereafter sign all papers that require the signature of an attorney. Any paper filed by a Visiting Attorney not in compliance with this Rule may be stricken from the record after 15 days' written notice transmitted to the Visiting Attorney at his or her address as known to the clerk. Upon compliance with this rule and introduction of the Visiting Attorney to the court by the Sponsoring Attorney, the Sponsoring Attorney, with the consent of the court, may be excused from further attendance during the proceedings and the Visiting Attorney may continue to appear in that particular case.

(b) Motion not required.

Filing a properly completed Statement of Visiting Attorney and paying the Visiting Attorney fee constitute all steps necessary to qualifying as a Visiting

Attorney for a particular case and no motion to appear as a Visiting Attorney is required.

(c) Payment of visiting attorney fee.

- (1) Fee payable to clerk. The court will charge a Visiting Attorney fee, payable to the Clerk, United States District Court, in an amount to be set by order. Pursuant to Judicial Conference policy, the fees will be used only for “purposes which inure to the benefit of the members of the bench and the bar in the administration of justice.” Other than library materials, the fees will not be used to supplement appropriated funds and will not be used to pay for materials or supplies available from statutory appropriations. The fees will be placed in a fund administered by the clerk as custodian of the fund. Disbursements will be made only at the direction of a committee, the members of which will be appointed by the Chief Judge, in accordance with a written plan.
- (2) West Virginia State Bar *pro hac vice* fee. The *pro hac vice* fee imposed by the Supreme Court of Appeals of West Virginia applicable to Visiting Attorneys shall be paid to The West Virginia State Bar and is not payable to the clerk of the district court.

(d) Exceptions to payment of visiting attorney fee.

- (1) Miscellaneous cases. A Visiting Attorney who files a miscellaneous case which does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the Visiting Attorney fee, from associating with a Sponsoring Attorney, and from filing the Statement of Visiting Attorney. A Visiting Attorney who files a miscellaneous case which does require judicial action (e.g., motion to compel testimony at a deposition) must comply with Rule 44.6.
- (2) Federal government attorneys. Attorneys employed by the United States Department of Justice or any other Federal department or agency will not be required to pay the Visiting Attorney fee.

- (3) Law students. Law students who participate in a case in accordance with these Rules will not be charged a Visiting Attorney fee.

- (e) Waiver of payment of visiting attorney fee.

A Visiting Attorney and his/her Sponsoring Attorney may file a motion requesting a waiver of the Visiting Attorney fee in a particular case or cases, for good cause shown. The motion will be decided by the judge assigned to the case; the motion should be filed within 20 days of the assignment of the case to the judge. If a waiver is granted, the Visiting Attorney will pay such Visiting Attorney fee in an amount as ordered by the presiding district judge.

- (f) Revocation of visiting attorney privilege.

For good cause, the presiding district judge may revoke the privilege of an attorney to be a Visiting Attorney in one or more specified cases.

## **LR Cr P 44.7. Bias and Prejudice**

The United States District Court for the Southern District of West Virginia aspires to achieve absolute fairness in the determination of cases and matters before it and expects the highest standards of professionalism, human decency, and considerate behavior toward others from its judicial officers, lawyers, and court personnel, as well as from all witnesses, litigants, and other persons who come before it. As to matters in issue before the court, conduct and statements toward one another must be without bias with regard to such factors as gender, race, ethnicity, religion, handicap, age, and sexual orientation when such conduct or statements bear no reasonable relationship to a good faith effort to argue or present a position on the merits. Judicial officers must ensure that appropriate action is taken to preserve a neutral and fair forum for all persons. Nothing in this Local Rule, however, is intended to infringe unnecessarily or improperly upon the otherwise legitimate rights, including the right of freedom of speech, of any person, nor to impede or interfere with the aggressive advocacy of causes and positions by lawyers and litigants.

## **LR Cr P 49.1. Filing Papers**

Except as otherwise permitted or required by the Federal Rules, these Local Rules, or order, the original of all papers not electronically filed shall be filed with the court at the clerk's office at the point of holding court in which the particular action or proceeding is docketed. In emergency situations, due to travel conditions, time

limitations or other factors, filings may be made at any of the clerk's offices, in which event the papers so filed shall be forwarded by the receiving clerk's office to the clerk's office at the point of holding court in which the particular action or proceeding is docketed. When electronically filing documents with the clerk's office, a paper courtesy copy to the assigned judicial officer is not required except where any motion, memorandum, response, or reply, together with documents in support thereof, is 50 pages or more in length.

### **LR Cr P 49.2. Filing by Facsimile or Electronic Means**

- (a) The clerk's office will not accept any facsimile transmission for filing unless ordered by the court.
- (b) Pursuant to FR Cr P 49(d), the clerk's office will accept pleadings or documents filed, signed or verified by electronic means that are consistent with the technical standards, if any, established by the Judicial Conference of the United States. A pleading or document filed by electronic means in compliance with this Rule constitutes a written paper for the purpose of applying these Rules and the Federal Rules of Criminal Procedure. All electronic filings shall be governed by the court's Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means for Criminal Cases, the provisions of which are incorporated by reference, and which may be amended from time to time by the court.

### **LR Cr P 49.3. E-Government Act**

All pleadings shall comply with the guidelines for E-Government Act privacy and public access which are available on the court's web site.

### **LR Cr P 53.1. Photography in and Broadcasting From Courtroom**

The taking or transmitting of photographs by any means or device in the courtroom, or in the corridors immediately adjacent, during judicial proceedings or during any recess, and the transmitting or sound recording of proceedings by radio, television, wireless device, landline device, or other device is not permitted. Upon approval of the court and under its supervision, proceedings, other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, presentation of portraits, naturalization proceedings, and similar ceremonial occasions, may be photographed in or broadcast from the courtroom.

## **LR Cr P 53.2 Impoundment of Photography and Broadcasting Equipment**

The United States Marshal may impound any camera, recording, broadcasting and other related equipment brought into the courtroom or the adjacent corridors in violation of LR Cr P 53.1. The impounded equipment shall be returned to its owner or custodian after the proceedings have concluded.

## **LR Cr P 55.1. Custody and Disposition of Exhibits**

### **(a) General rules governing custody of exhibits.**

After being marked for identification, exhibits of a documentary nature admitted into evidence or made a part of the record in any case pending or tried in this court shall be placed in the custody of the clerk unless otherwise ordered. All other exhibits, models and materials admitted into evidence that cannot be stored conveniently in the clerk's facilities shall be retained in the custody of the attorney or party producing them unless otherwise ordered, and the attorney or party shall execute a receipt therefor. All exhibits admitted into evidence that are sensitive in nature (for example, controlled substances, legal or counterfeit money, firearms, materials depicting child pornography or obscenity, dangerous chemicals or devices, or contraband of any kind), shall be retained by the United States Marshal or his or her designee during the course of the hearing or trial. Following the conclusion of the hearing or trial, any sensitive exhibit shall be returned to the party who offered it.

### **(b) Time for retention; availability for examination or inspection.**

A party or attorney who has custody of an exhibit shall keep it available for the use of this court or any appellate court, until 2 years after the conclusion of the case and any direct appeal, and shall grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding as appropriate. For the purpose of this Rule, the "conclusion of the case and any direct appeal" refers to the time when a conviction becomes final for the purposes of 28 U.S.C. § 2255.

### **(c) Return of documentary exhibits; substitution of copies.**

Upon application to the court, the court may order documentary exhibits retained by the clerk be returned to the party, who offered the exhibit,



provided that copies approved by counsel and unrepresented parties are filed in place of the originals.

(d) Return of exhibits upon stipulation.

After final judgment and 1 year after the time for motion for new trial and appeal has passed, or upon the filing of a stipulation waiving and abandoning the right to appeal and to move for a new trial, the clerk is authorized, without further order, to return all exhibits to the parties or their counsel.

### **LR Cr P 55.2. Removal of Papers from Custody of Clerk**

Papers on file in the office of the clerk shall be produced pursuant to subpoena from a court of competent jurisdiction directing their production.

Papers may be removed from the files of the clerk only upon order except that the clerk may permit temporary removal of papers by a district court judge, bankruptcy judge, a magistrate judge, or a master in matters relating to their official duties.

The person receiving the papers shall provide to the clerk a signed receipt identifying the papers removed.

### **LR Cr P 56.1. Sessions**

The court is considered open and in continuous session in all divisions of the district on all business days throughout the year in accordance with the provisions of 28 U.S.C. § 139, FR Cr P 56, and other controlling statutes and rules.

### **LR Cr P 58.1. Authority of Magistrate Judges in Misdemeanor Cases**

Magistrate judges are specially designated to try persons accused of, and sentence persons convicted of, misdemeanors committed within the Southern District of West Virginia, as provided in 18 U.S.C. § 3401.

### **LR Cr P 58.2. Assignment of Misdemeanors and Petty Offenses**

Upon the filing of an information, complaint, or violation notice, or the return of an indictment, all misdemeanor and petty offense cases shall be assigned to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and FR Cr P 58.

## **LR Cr P 58.3 Petty Offenses**

(a) Schedule of petty offenses.

The Appendix to the Local Criminal Rules contains a Schedule of Petty Offenses. The Schedule, which may be modified by the Chief Judge, lists petty offenses, as defined in 18 U.S.C. § 19, that occur within the territorial jurisdiction of the United States, whether originating under federal statute or regulation or under applicable state statute by virtue of the Assimilated Crimes Act, 18 U.S.C. § 13.

(b) Forfeiture of collateral in lieu of appearance.

A defendant charged with a petty offense listed in the Schedule may post the collateral for that offense, in lieu of appearing before a magistrate judge to answer the charge, unless the offense is noted as “mandatory appearance” or the arresting or citing officer deems the offense to be “aggravated.” Posting the collateral signifies that the defendant does not contest the charge or request a hearing before the designated magistrate judge. The posted collateral shall be administratively forfeited.

(c) Failure to post collateral.

If a defendant does not post the collateral and fails to appear before the designated magistrate judge for trial on the cited petty offense(s), the collateral amount listed for the offense on the Schedule shall be forfeited to the United States. Forfeiture of the collateral shall be tantamount to a finding of guilty. Failure by a defendant to appear to answer an offense for which appearance is mandatory, or an offense that is aggravated, may result in an arrest warrant being issued for the defendant.

(d) Certification of convictions of traffic violations.

Either the clerk or the designated magistrate judge shall certify to the proper authority the record of any conviction of a traffic violation, as required by the applicable state statutes.

(e) Arrest.

Nothing contained in this Local Rule shall prohibit a law enforcement officer from arresting an offender for committing any offense, including petty offenses for which collateral may be posted and forfeited, and upon arrest, taking the person charged without unnecessary delay before the nearest magistrate judge.

## **LR Cr P 59.1. General Authority of Magistrate Judges**

A magistrate judge is a judicial officer of the district court. A magistrate judge of this district is designated to perform, and may be assigned, any duty allowed by law to be performed by a magistrate judge. Performance of a duty by a magistrate judge will be governed by the applicable provisions of federal statutes and rules, the general procedural rules of this court, and the requirements specified in any order or reference from a district judge. In performing a duty, a magistrate judge may determine preliminary matters; require parties, attorneys, and witnesses to appear; require briefs, proofs, and argument; and conduct any hearing, conference, or other proceeding the magistrate judge deems appropriate.

## **LR Cr P 59.2. Statutory Duties**

Magistrate judges are authorized or specially designated to perform the duties prescribed by 28 U.S.C. § 636, and such other duties as may be assigned by the court or a district judge which are not inconsistent with the Constitution and laws of the United States.

## **LR Cr P 59.3. Duties under the Federal Rules of Criminal Procedure**

Magistrate judges are authorized or specially designated to perform all duties attributed to magistrate judges by the Federal Rules of Criminal Procedure.

## **LR Cr P 59.4. Miscellaneous Duties**

Magistrate judges are also authorized to:

- (a) exercise general supervision of criminal calendars, conduct calendar and status calls, conduct hearings, and determine motions to expedite or postpone the trial of cases for the district judges;
- (b) conduct pretrial conferences, scheduling conferences, and related pretrial proceedings;
- (c) conduct arraignments in criminal cases not triable by a magistrate judge and take not guilty pleas in such cases;
- (d) with the consent of the parties, conduct arraignments in criminal cases not triable by a magistrate judge, receive a defendant's guilty plea, and submit proposed findings of fact and recommendations as

to whether the presiding district judge should accept the guilty plea, and find the defendant guilty;

- (e) impanel grand juries, conduct hearings as to prospective jurors who fail to appear for grand jury duty, determine the qualification of specific grand jurors to participate in the investigation of particular matters, determine motions to quash grand jury subpoenas, and receive grand jury returns;
- (f) with the consent of the parties, conduct voir dire and preside over the selection of petit juries;
- (g) accept waivers of indictment;
- (h) conduct necessary proceedings leading to the potential revocation of probation or supervised release;
- (i) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses, or evidence for court proceedings;
- (j) order the exoneration or forfeiture of bonds;
- (k) conduct proceedings for initial commitment of narcotic addicts under Title III of the Narcotic Addict Rehabilitation Act, 42 U.S.C. §§ 3401 *et seq.*;
- (l) order the examination of a defendant to determine his or her mental competence to understand the nature and consequences of the proceeding against the defendant or to assist properly in his or her defense, and conduct hearings on a defendant's mental competence, and to determine if a defendant is presently suffering from a mental disease or defect which would give rise to the defense of insanity, or which is inconsistent with the mental state required for the offense charged, all as provided in 18 U.S.C. § 4241 *et seq.*;
- (m) supervise proceedings conducted pursuant to letters rogatory as provided in 28 U.S.C. § 1782(a);
- (n) issue orders of withdrawal of funds from the court registry pursuant to 28 U.S.C. § 2042;
- (o) conduct extradition proceedings in accordance with 18 U.S.C. § 3184;

- (p) issue orders or warrants authorizing acts necessary in the performance of the duties of administrative and regulatory agencies and departments of the United States; and
- (q) serve with designated committees or other judicial officers, participate in promulgation of local rules and procedures, administration of the forfeiture of collateral system, and other functions of court governance as approved by the Chief Judge.

#### **LR Cr P 59.5. Assignment of Matters to Magistrate Judges by Division**

To the extent not provided for in these Local Rules and the Federal Rules of Criminal Procedure, criminal cases shall be assigned to the magistrate judge for the division in which the alleged offense(s) occurred. In the case of offense(s) which allegedly occurred in more than 1 division, the case shall be assigned to the magistrate judge for the division in which the majority of the allegedly criminal conduct occurred.

#### **LR Cr P 59.6. Other Duties Assigned and Matters Referred**

Individual district judges may, in their discretion, assign or request magistrate judges to perform such other duties as are not inconsistent with the Constitution and laws of the United States, including but not limited to conducting hearings, including evidentiary hearings, and submitting proposed findings of fact and recommendations for the disposition of motions to dismiss or quash an indictment or information, and to suppress evidence.